

Neutral Citation No. - 2023:AHC-LKO:80387-DB

Court No. - 1

Case :- WRIT - A No. - 9125 of 2023

Petitioner :- Bhasker Verma

Respondent :- State Public Services Tribunal Indira Bhawan Lko
Thru. Chairman And Others

Counsel for Petitioner :- Yogendra Kumar Singh,Aviral
Chandra,Shraddha Tripathi

Counsel for Respondent :- Manish Mishra,C.S.C.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

- (1) The instant writ petition under Article 226 of the Constitution of India has been filed by the petitioner, **Bhasker Verma**, challenging the correctness of the judgment/order dated 30.01.2023 passed by the State Public Services Tribunal, Indira Nagar, Lucknow (hereinafter referred to as '**the Tribunal**'), whereby the Claim Petition No. 282 of 2021 filed by the petitioner against the order of punishment of censure dated 13.08.2022, has been dismissed.
- (2) Submission of the learned Counsel representing the petitioner-claimant is that the learned Tribunal has not correctly appreciated the facts and circumstances of the case and has, in fact, recorded a vague finding that there are no lapses in the enquiry as well as in impugning the punishment order of censure. Learned Counsel has submitted that on the allegation of laxity in conducting the investigation of criminal cases entrusted to him, a preliminary enquiry was conducted against

the petitioner and a show cause notice was issued to him. In response thereto, the petitioner submitted his reply, denying all the allegations. Learned Counsel has submitted that though a reply denying all the allegations levelled against him was submitted, however the impugned order of punishment of censure has been passed against him without considering the said reply. According to the learned Counsel, neither the Inquiry Officer nor the learned Tribunal has indicated anywhere as to which is/are the clinching evidences against the petitioner, so as to hold him guilty of delay or on what basis severe negligence in conducting the investigation of the criminal cases was made out. In this view, submission of the learned Counsel for the petitioner is that the judgment of the learned Tribunal as well as order of punishment/censure dated 13.08.2022, which are under challenge herein, is not sustainable.

- (3)** On the other hand, learned Standing Counsel representing the State has argued that in the facts and circumstances of the case, the judgment passed by the learned Tribunal does not warrant any interference by this Court in this case for the reason that a clear finding has been recorded by the learned Tribunal to the effect that the enquiry officer has conducted the enquiry in a detailed manner and has submitted his report on the basis of cogent evidences and further the punishment order was a reasoned and speaking one. He has further argued strenuously

that as a matter of fact, the charges against the petitioner were proved and the enquiry officer has submitted his report on the basis of material collected during the enquiry and reply submitted by the petitioner. Therefore, it has been submitted by the learned Standing Counsel that such a course adopted by the State-authorities while conducting the departmental proceedings against the petitioner cannot be said to be flawed in any manner as in any case the charges were proved. In this view, submission on behalf of the State is that at this juncture, no interference in the impugned judgment and order passed by the learned Tribunal is warranted.

- (4) We have given our thoughtful consideration to the rival submissions made by the learned counsel appearing for the respective parties and have also perused the records available before us on this writ petition.
- (5) The record available before this Court reveals that while working on the post of Circle Officer, Auraiya in the year 2016-17, a preliminary enquiry was conducted against the petitioner on the allegation that he showed laxity in conducting the investigation of Case Crime No. 47 of 2016, under Sections 363, 366 I.P.C and Section 3 (1)(x) of the S.C./S.T. Act and Case Crime No. 124 of 2016, under Sections 363, 366, 504 I.P.C., Section 7/8 POCSO Act, Section 5 (1) (x) of the S.C./S.T. Act registered at Police Station Kotwali, District

Auraiya and similar other matters. A show cause notice dated 11.03.2019 was issued to the petitioner proposing the punishment of censure entry. In response thereof, the petitioner submitted his reply. The Disciplinary Authority, having regard to the reply submitted by the petitioner as well as the evidences collected in the inquiry proceedings and the report of the enquiry officer, found that the reply submitted by the petitioner was not satisfactory and accordingly punished the petitioner with a censure entry vide impugned order dated 13.08.2020. This order of punishment/censure dated 13.08.2020 was challenged by the petitioner, wherein the learned tribunal, vide impugned judgment/order dated 30.01.2023, dismissed the claim petition. It is this judgment/order dated 30.01.2023 as well as order punishment/censure dated 13.08.2020, which are under challenge in the instant writ petition.

- (6) It is well settled principle of law that while judicially scrutinizing any disciplinary matter, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India is primarily concerned with the decision making process and does not act as an appellate court. This Court finds it profitable to quote few paragraphs of the celebrated judgment of the Hon'ble Apex Court in the case of **State Bank of India and others Vs. Ramesh Dinkar Punde, (2006) 7 SCC 212**, which has brought out the law on the power and scope of judicial

review in department proceedings. The Apex Court in the said judgment has held as under:

“6. Before we proceed further, we may observe at this stage that it is unfortunate that the High Court has acted as an Appellate Authority despite the consistent view taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an Appellate Authority:

“Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an Appellate Authority.” (See Govt. of A.P. v. Mohd. Nasrullah Khan [(2006) 2 SCC 373 : 2006 SCC (L&S) 316], SCC p. 379, para 11.)

.....

9. It is impermissible for the High Court to re-appreciate the evidence which had been considered by the inquiry officer, a disciplinary authority and the Appellate Authority. The finding of the High Court, on facts, runs to the teeth of the evidence on record.

.....

12. From the facts collected and the report submitted by the inquiry officer, which has been accepted by the disciplinary authority and the Appellate Authority, active connivance of the respondent is eloquent enough to connect the respondent with the issue of TDRs and overdrafts in favour of Bidaye.

.....

15. In Union of India v. Sardar Bahadur [(1972) 4 SCC 618 : (1972) 2 SCR 218] it is held as under: (SCC p. 623, para 15)

“A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that lender was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. The Letters Patent Bench had the same power of dealing with all questions, either of fact or of law arising in the appeal, as the Single Judge of the High Court. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. A finding cannot be characterised as perverse or unsupported by any relevant materials, if it was a reasonable inference from proved facts. (SCR p. 219)”

.....

16. In Union of India v. Parma Nanda [(1989) 2 SCC 177 : 1989 SCC (L&S) 303 : (1989) 10 ATC 30] it is held at SCC p. 189, para 27 as under:

“27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the

inquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.”

17. In *Union Bank of India v. Vishwa Mohan* [(1998) 4 SCC 310 : 1998 SCC (L&S) 1129] this Court held at SCC p. 315, para 12 as under:

“12. After hearing the rival contentions, we are of the firm view that all the four charge-sheets which were enquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non-supply of the enquiry authority's report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non-furnishing of the enquiry report/findings to him.”

18. In *Chairman and MD, United Commercial Bank v. P.C. Kakkar* [(2003) 4 SCC 364 : 2003 SCC (L&S) 468] this Court held at SCC pp. 376- 77, para 14 as under:

*“14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik* [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] it is no defence available to say that there was no loss or profit*

resulted in case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

19. In *Regional Manager, U.P. SRTC v. Hoti Lal* [(2003) 3 SCC 605 : 2003 SCC (L&S) 363] it was pointed out as under: (SCC p. 614, para 10)

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable."

20. In *Cholan Roadways Ltd. v. G. Thirugnanasambandam* [(2005) 3 SCC 241 : 2005 SCC (L&S) 395] this Court at SCC p. 247, para 15 held:

"15. It is now a well-settled principle of law that the principles of the Evidence Act have no application in a domestic enquiry."

- (7) Apparently, the learned Tribunal, while examining the matter, has clearly given a finding that the enquiry officer has conducted the enquiry in a detailed manner and has submitted his report on the basis of cogent evidences. The learned Tribunal has also found from the record that the petitioner committed negligence in conducting the investigation in proceedings inasmuch as neither prosecutrix was recovered nor any effort was made by the petitioner to arrest the accused. When the investigation was transferred from the petitioner, the subsequent investigating officer had completed the investigation. The learned Tribunal has also found that the plea of the petitioner that he prepared 12 C.D. parchas, was an

excuse on his part and equivalent to ill-motive. The learned Tribunal has also returned a finding that the conduct of the petitioner, being in a disciplined force, cannot be taken lightly rather to constitute a grave misconduct. In this view of the matter, the learned Tribunal has returned a finding that there is no procedural or legal lapse in passing the impugned order of punishment/censure. The finding of fact rendered by the tribunal, in our view, do not call for any interference.

- (8)** Learned Counsel for the petitioner has failed to show any document(s) contrary to the findings recorded by the Tribunal.
- (9)** For the reasons aforesaid, we do not find any illegality or infirmity with the order passed by the learned Tribunal.
- (10)** Accordingly, the writ petition being devoid of merit, is hereby **dismissed.**
- (11)** There will be no order as to costs.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 28.11.2023

akhilesh/Ajit/-