

Neutral Citation No. - 2025:AHC:63328

Court No. - 4

'AFR'

Case :- WRIT - A No. - 36216 of 2017

Petitioner :- Jagdeesh Singh Bhadauria

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Dharmendra Kumar Srivastava, Ram
Surat Patel

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar, J.

Petitioner who is an ex-lekhpal of the revenue department of the State is aggrieved by the order dated 15th March, 2005, which is in the nature of major penalty of dismissal from service for alleged charges of taking bribe of Rs. 500/- from one Pooran Lal S/o Chokhe Lal, resident of village and chak holder no. 315 and 316 as well as order dated 22nd June, 2017, whereby his departmental appeal against the order of dismissal from service has also come to be rejected.

The main plank of arguments advanced by learned counsel for the petitioner is that the findings returned by the enquiry officer indicting the petitioner of the charge of bribery was on the basis that petitioner himself admitted the charge, is absolutely perverse and hence untenable.

According to learned counsel for the petitioner , petitioner denied the charge of taking any bribe of Rs. 500/- from Pooran Lal a chak holder and resident of village concerned, inasmuch as he denied to have been paid any bribe of Rs. 500/- as claimed in the first information report lodged against the petitioner under the Prevention of Corruption Act, 1988, in which petitioner finally stood acquitted from the charge by the Additional Sessions Judge, Special Act vide judgment dated 09.11.2016 passed in criminal case no. 24 of 2003 arising out of case crime no. 676 of 2002 under Section 7 13(1)(D) read with Section 13 (2) of Prevention of Corruption Act, 1988.

Countering the submissions, learned Additional Chief Standing Counsel appearing for the State respondents defended the order of dismissal from service as according to him once petitioner himself admitted that Pooran Lal put Rs. 500/- in his pocket, this itself had sufficiently proved the charge, may be for attending circumstance he might have pleaded that he was trapped.

Learned Additional Chief Standing Counsel further defended the imposition of punishment awarded to the petitioner on the ground that once the enquiry officer brought home the charge and petitioner had been given enquiry report, an employee charged with misconduct of taking bribe deserved the maximum punishment. Learned Additional Chief Standing Counsel has argued that looking to the charge that was brought home, the punishment awarded was befitting one and cannot be claimed to be shockingly disproportionate to alter the same. Learned Additional Chief Standing Counsel has relied upon following authorities in the case of

V. Ramana v. A.P. SRTC, (2005) 7 SCC 338, in which it has been held thus:

11. *The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.*

12. *To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.*

Lastly the learned Additional Chief Standing Counsel argued that on 'principle of preponderance of probability' the evidence was there in support to prove the charge and hence this court may not interfere with the order under Article 226 of the Constitution.

Learned Additional Chief Standing Counsel has relied upon following authorities in the case of **Union of India v. Ashok Kumar Aggarwal, (2013) 16 SCC 147**, in which the Court has held thus:

26. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in State of M.P. v. Shardul Singh [(1970) 1 SCC 108] , P.V. Srinivasa Sastry v. Comptroller & Auditor General [(1993) 1 SCC 419 : 1993 SCC (L&S) 206 : (1993) 23 ATC 645] , ESI v. T. Abdul Razak [(1996) 4 SCC 708 : 1996 SCC (L&S) 1061] , Kusheshwar Dubey v. Bharat Coking Coal Ltd. [(1988) 4 SCC 319 : 1988 SCC (L&S) 950] , Delhi Cloth & General Mills Ltd. v. Kushal Bhan [AIR 1960 SC 806] , U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan [1993 Supp (3) SCC 483 : 1994 SCC (L&S) 67 : (1993) 25 ATC 764] , State of Rajasthan v. B.K. Meena [(1996) 6 SCC 417 : 1996 SCC (L&S) 1455] , Prohibition and Excise Deptt. v. L. Srinivasan [(1996) 3 SCC 157 : 1996 SCC (L&S) 686 : (1996) 33 ATC 745] and Allahabad Bank v. Deepak Kumar Bhola [(1997) 4 SCC 1 : 1997 SCC (L&S) 897] , wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial cannot be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question.

On the point of acquittal in the criminal case, learned Additional Chief Standing Counsel argued that charge could not be proved only for the reason that main witnesses turned hostile. So according to learned Additional Chief Standing Counsel, it was not an honourable acquittal.

Having heard learned counsel for the respective parties and having perused the records, I find that the disciplinary authority has come to pass the order of punishment in the nature of dismissal from service on the ground that petitioner himself had written in his explanation dated 20.12.2004 that Pooran Lal was having enmity with him as he had taken steps for removal of unauthorized possession from plot no. 316 by writing in compliance of order dated 6.6.2001 passed in the case no. 76 of 2001 under Section 122 B of erstwhile U.P.Z.A & L.R. Act and so Pooran Lal was seeking an appropriate opportunity to implicate him falsely and it was on 21.08.2002 that everything was preplanned and Pooran Lal deliberately tried to place Rs. 500/- into the pocket of the petitioner to take it as he was in extreme urgency to rush to his village where his son had suffered gunshot injury and when petitioner refused to take money then he deliberately tried to put the same in his hand. It is in this process, currency note fell on the ground which was picked up by another person staying beside him and he again tried to put currency in the hand of the petitioner, but petitioner refused and in the meanwhile the other person who had currency note in his hand framed petitioner for charge of corrupt practise stating that currency was recovered from his pocket. They claimed to be men of vigilance department as Deputy Superintendent, vigilance and constable and asked petitioner to accompany them. When petitioner refused, they forcefully took him to Kotwali (Head Police Station). He denied to have taken any rupee from Pooran Lal on 21.8.2002. To better appreciate the statement given by petitioner and the same is reproduced hereunder:

“ मैं रिश्त के आरोप में षडयंत्र पूर्वक पकड़ा गया था। पूरन लाल पुत्र चोखे लाल निवासी करुई बुजुर्ग थाना डकोर तहसील उरई ने 500/- रुपये यह कह कर जेब में डाले थे कि मेरे गांव में मेरे लड़के से गोली चल रही है मुझे वहाँ जल्दी जाना है यह रुपये रख लो मैं वापस आने पर ले लूँगा। दिनांक 26.08.2002 को मुझे निलंबित किया गया था। आरोप पत्र मुझे दिनांक 13.11.2002 को प्राप्त हुआ। पूरन लाल पुत्र चोखे लाल की चक नम्बर 315, 317 की पैमाइश हेतु प्रार्थनापत्र देना बताया परन्तु आज तक प्रार्थना पत्र प्राप्त नहीं हुआ।

पैमाइश का कोई प्रार्थना पत्र मेरे पास ही नहीं आया न मैंने पैमाइश हेतु कोई रिश्त मांगी। पूरन लाल इसलिए मुझसे रंजिश मानता था कि वह चक नम्बर 315 व 317 के बीच में चकरोड संख्या 316 अपने चकों में मिलाये हुये थे जिसकी मैंने रिपोर्ट 122 बी. के तहत की थी और बेदखल कराया था। मैंने लगभग एक साल पूर्व 122 बी. की रिपोर्ट की थी इसीलिए मुझसे रंजिश मान कर रिश्त प्रकरण में फंसाया था।”

From bare reading of the above statement, any prudent man would easily come to conclude that petitioner instead of admitting the fact denied the same absolutely. Thus, even in the oral enquiry which was held, he repeatedly denied the charge of taking bribe from Pooran Lal.

The appellate authority while considering the appeal filed against the findings returned in the enquiry report as well as indictment of the petitioner by disciplinary authority while evaluating and assessing reply of the petitioner proceeded to discuss more the judgment passed in the criminal case and held that since petitioner was acquitted only for the stark witness going hostile, so it was a case of benefit of doubt and not honourable acquittal. The appellate authority has proceeded further to hold that in departmental enquiry, guilt is not required to be proved to the hilt as is required in criminal case and looking to attending circumstance, if in departmental enquiry evidence are sufficient, then there will be no legal impediment in bringing home the charge against a delinquent officer. The appellate authority has justified the order of dismissal from service passed by the disciplinary authority.

From the close examination of the order of the appellate authority, I do not find there to be any discussion as to how charge could be brought home when nobody took money from the pocket of the delinquent employee and delinquent employee repeatedly complained that recovery of currency note was falsely being attributed from his possession at the instance of Pooran Lal. Even disciplinary authority, I find, has not discussed as to how recovery of currency was attributable to possession of the petitioner when currency note had felled on the ground as stated and another person standing beside the petitioner took the same in his hand.

There is no finding as to whether currency note was soaked in any chemical and that sample was collected then and there which ultimately established that this currency note had been taken by the petitioner in his own hand.

It is true that in the case of disciplinary proceeding preponderance of probability plays the crucial role than in cases of criminal law where guilt is required to be proved to the hilt but if one looks at the entire circumstances where petitioner had been taken into custody but nobody claimed that currency was recovered from his possession, it may be difficult to believe that delinquent employee/charged officer was guilty of taking bribe. While in the criminal case prosecution had evidence of chemical reaction liquid after washing hands of accused and the shirt soaked in chemical water to which Pooran Lal denied absolutely during his cross examination but no such statement as recorded in examination in Chief in departmental enquiry was made by Pooran Lal before the enquiry officer, nor any departmental witness made any such statement. The disciplinary authority has not referred to any such statement coming up during enquiry, nor even the appellate authority has found there to be any such statement ever made before the enquiry officer.

In a departmental enquiry if it is proceeded upon a third party complaint or first information report lodged by a complainant, the enquiry officer can bring home the charge only for there being any intrinsic material placed or any departmental witness giving oral evidence of the incident either being witness to it or being in possession of such material which may have been there to give clue to preponderance of probability of such a high degree that if believed, would lead to only conclusion of guilt being proved. *Lord Denning rightly observed " the degree of probability depends upon the subject matter, but "whether the issue is one of cruelty or of a loan on a pro note, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard proof to apply for finding whether the*

burden of proof is discharged (2020) 1 SCC 1, M. Siddiq (Dead) thorough Legal Representatives (Ram Janmbhumi Temple Case) v. Mahant Suresh Das and Others).

Applying the above test to facts of the case except for the alleged admission by the charged officer, there was no evidence before the enquiry officer and/or the disciplinary authority to prove the charge. Applying common sense to statement of charged officer in the present case, no prudent man shall reach to the conclusion that charged officer admitted the guilt.

The theory developed by the disciplinary authority that attending circumstance and manner in which recovery of currency shown cast doubt, but since enmity of Pooran Lal had been admitted by the petitioner, therefore, it could be read either way. Petitioner might be or might not be involved. It is a case of no evidence.

It is, however, true that scope of this Court is very limited in the matter of disciplinary proceedings once findings have come to be returned by the enquiry officer, which has further been approved and accepted by the disciplinary authority, against which appeal has been dismissed but in total circumspect of the case as discussed above where there is a case of no evidence, I am of the considered view charge could not have been brought home and petitioner could not have been visited with punishment.

There is no quarrel about the principles laid down in the authorities cited by learned Standing Counsel that this Court would ordinarily not interfere with the decision of disciplinary authority in departmental proceeding matter and would also not interfere with the nature of punishment awarded unless the punishment is shockingly disproportionate but in a case where there is no evidence to bring home charge and the finding returned by enquiry officer is found perverse, a mere reliance of the same by the disciplinary authority to inflict the order of punishment, whatever its nature, cannot refrain this Court from interfering with the order passed by the disciplinary authority.

In view of above, the order passed by the disciplinary authority dated 15th March, 2005 and that of the appellate authority dated 22.6.2017 are hereby quashed with all consequential benefits to the extent of punishment of dismissal from service inflicted upon the petitioner. The consequences to follow.

Order Date :- 21.4.2025

Sanjeev