

Court No. - 4

Case :- WRIT - A No. - 1263 of 2024

Petitioner :- Awanindra Kumar Rai

Respondent :- State Of Up And 5 Others

Counsel for Petitioner :- Kavindra Singh

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the petitioner as well as learned Standing Counsel.
2. By means of this petition filed under Article 226 of the Constitution, petitioner has questioned the order dated 21.12.2023, whereby, a penalty in the nature of dismissal from service has been imposed.
3. The only argument advanced by learned counsel for the petitioner for assailing the order impugned, is that petitioner was not accorded opportunity by the Enquiry Officer to participate in the same and hence entire enquiry is ex parte. In order to buttress his argument, learned counsel for the petitioner has drawn the attention of this Court to reply submitted by him to the show cause notice in which he categorically took a stand that he was not permitted to examine the witnesses, nor was permitted to get the statement recorded, nor had the opportunity to peruse the records.
4. Meeting the submissions so advanced by learned counsel for the petitioner, learned Standing Counsel submits that from the recital contained in the enquiry report, it is very much reflected that petitioner was afforded reasonable opportunity and even his statement was recorded before the enquiry officer and therefore, this is no more open for the petitioner to assail the action by the disciplinary authority on the ground that petitioner had not been heard in the matter of enquiry by the enquiry officer.
5. I have perused the records and have gone through the order impugned as well as the enquiry report.
6. From the perusal of enquiry report it is apparent that the petitioner was permitted to participate in the enquiry and that was how he appeared before the enquiry officer on 25.10.2023 and

before that he had already submitted his reply and when he demanded for perusal of certain documents, till 30.10.2023 petitioner was made to peruse the entire records which might stand against him as a documentary evidence presented by the department.

7. Upon a pointed query being made as to whether petitioner has made any statement assailing the specific finding returned by the enquiry officer, the counsel for the petitioner has relied only upon the reply to the show cause notice.

8. In my considered view, in a departmental proceeding, this Court has very limited scope to interfere with. It is only in case where procedure followed by the enquiry officer is a flawed one for the procedure prescribed being not adhered to, it is not open for the delinquent employee to question the same. In the case of **Union of India v. Ashok Kumar Agarwal, (2013) 16 SCC 147**, the Supreme Court has held that this Court should not interfere in disciplinary proceedings matter ordinarily. In a later judgment in the matter of **Union of India & Ors v. Subrata Nath, 2022 SCC OnLine SC 1617** vide paragraph nos. 14, 15, 16, 17, 18, 19, 20 & 21 the Court has held thus:

14. 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.

15. In the above context, following are the observations made by a three-Judge Bench of this Court in [B.C. Chaturvedi](#) (supra) :

"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.

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]

16. In [State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya](#), 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]

17. In [Chairman & Managing Director, V.S.P. and Others v. Goparaju Sri Prabhakara Hari Babu](#), 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."

18. 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](#) 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) reappraise 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."

19. In [Union of India and Others v. Ex. Constable Ram Karan](#), 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."

20. A Constitution Bench of this Court in [State of Orissa and Others](#) (supra) held that if the order of dismissal is based on findings that establish the prima

facie guilt of great delinquency of the respondent, then the High Court cannot direct reconsideration of the punishment imposed. Once the gravity of the misdemeanour is established and the inquiry conducted is found to be consistent with the prescribed rules and reasonable opportunity contemplated under the rules, has been afforded to the delinquent employee, then the punishment imposed is not open to judicial review by the Court. As long as there was some evidence to arrive at a conclusion that the Disciplinary Authority did, such an order becomes unassailable and the High Court ought to forbear from interfering. The above view has been expressed in [Union of India v. Sardar Bahadur](#).

21. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in [P. Gunasekaran](#) (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor.

9. In the case of **Managing Director, ECIL, Hyderabad & Others v. B.Karunakar & others**, (1993) 4 SCC 727, Supreme Court has very categorically held that there are two stages for the show cause; the first stage when the charge sheet is issued to the delinquent employee, a reasonable opportunity is required to be given to him to submit reply and to participate in the enquiry; and the second show cause is the stage when the enquiry report is submitted and thereafter, delinquent employee is required to furnish reply to the show cause notice as an explanation to the proposed action on the basis of enquiry report.

10. Both the formalities have stood fully complied with in the present case as the petitioner was issued with the charge sheet in compliance with the earlier order of writ court passed in Writ A No. 37028 of 2006 to which petitioner duly replied and thereafter, I find from the enquiry report that petitioner was also permitted to participate in the enquiry. Thus, the ground for which the order impugned has been assailed is rendered unsustainable. I do not find any other good ground to interfere with the order of dismissal from service passed by disciplinary authority which is preceded by

a full fledged domestic enquiry.

11. Petition fails and is accordingly **dismissed**.

Order Date :- 4.8.2025

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